ANADARKO PRODUCTION CO.

IBLA 84-29 Decided October 9, 1984

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer M 58345.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

   If the first-drawn applicant for a simultaneous oil and gas lease has filed an offer that does not comply with 43 CFR 3112.4-1 (1982), the offer must be rejected. If the offer has been signed by one who has been desig-nated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or reference to a qualifications file where such authorization has been filed, the offer must be rejected.

APPEARANCES: Paul E. Feldman, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Anadarko Production Company (Anadarko) has appealed from the September 14, 1983, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease offer M 58345. Anadarko's application was drawn with first priority for consideration for parcel MT-342 in the March 1983 drawing. By notice dated July 11, 1983, appellant was notified to send the first year's rental payment and executed lease forms within 30 days after receipt of the notice. The notice specifically advised appellant: "The regulations require that an attorney-in-fact signing the simultaneous offer on behalf of the prospective lessee shall file, together with the offer, a copy of the power of attorney or reference to the serial number under which such authorization is filed." Although Anadarko's offer was signed by an attorney-in-fact, Paul E. Feldman, Anadarko failed to provide a copy of the power of attorney or a reference to the serial number required by the notice. For this reason, appellant's application was rejected.

[1] The pertinent part of 43 CFR 3112.4-1(b) (1982) provides: 1/

1/ The regulations covering oil and gas leasing on Federal lands were revised, effective Aug. 22, 1983. 48 CFR 33678 (July 22, 1983). All citations used in this decision refer to those regulations in effect at the time of the determination by the Montana State Office.

> § 3112.4-1 The lease offer and payment of first year's rental.
>
> (b) * * * Any attorney-in-fact signing the lease offer or paying the first year's rental on behalf of the prospective lessee shall file, together with the offer and/or rental, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed over the personal handwritten signature of the prospective lessee in ink.

The regulation clearly states the duties of an attorney-in-fact who completes the lease offer under subpart 3112. Filing an offer that does not comply with section 3112.4-1 necessitates rejection of the offer. 43 CFR 3112.6-1(d); Thomas M. Block, 76 IBLA 364 (1983).

Appellant states that in March and April of 1982, Anadarko had provided various BLM state offices with instruments evidencing Paul E. Feldman's power of attorney from Anadarko. In acknowledging receipt of these documents, the Montana State Office advised that qualification documents were no longer required to be submitted. The Colorado State Office further advised that the changes in regulations have also eliminated the practice of using a serial number to refer to qualification information maintained by BLM. Appellant states that the confusion created by these letters from BLM cause its offer to be defective.

The 1982 letters from BLM were correct insofar as the filing of oil and gas lease applications was concerned. The regulations, however, clearly provided that if an application was drawn with first priority, the applicant had to provide a copy of the power of attorney with the offer forms. We fail to see how appellant could have reasonably believed that the general information in these 1982 notices excused it from having to comply with the explicit instructions in the July 1983 notice which listed the necessary steps to be completed in order to obtain the lease.

Appellant contends that because BLM's corporate qualification files were public records, BLM itself was on notice of the content of its own qualification files which included appellant's qualifications filed in 1982. Were we to accept this argument, we would render meaningless the regulatory requirement that applicants use a reference number if they wish BLM to rely on qualifications previously filed. It was appellant's responsibility to submit an offer in compliance with the applicable regulations. Its responsibility cannot be shifted to BLM.

In a supplemental statement of reasons, appellant contends that the court's decision in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), requires reversal of BLM's decision. In that case, the court reversed the Department's rejection of an oil and gas lease application which was undated. The court found that notwithstanding the fact that the entry of a date within the filing period was required by regulation, the omission was a "trivial defect" and a "nonsubstantive error." Conway, supra at 516. Appellant maintains that failure to file the power of attorney information is similarly a trivial defect, and notes that such information is not required for applicants who file offers over the counter. However, the fact that submission of such

information is not required of over-the-counter applicants does not support the conclusion that failure to comply with the requirement with respect to simultaneous lease offers constitutes a trivial defect. Rather, the requirement was imposed in order to address a problem of unique concern to the simultaneous filing system.

The regulations pertaining to over-the-counter offers make no prohibition on a party having an interest in more than one application for the same piece of land. This is because priority among rival applicants is established by the time when an application is filed. By contrast, in the simultaneous filing system, priority for consideration is determined by selecting one application from perhaps thousands of applications filed at the same time. Prompted by a concern for fairness to all participants in the system, the Department has for decades prohibited a party from having an interest in more than one application filed for any given parcel under the simultaneous system. See 43 CFR 3112.2-1(f). Over the past several years, there has been significant concern that filing services and agents for applicants have abused the simultaneous system by retaining undisclosed interests in their clients' applications and by violating the prohibition against multiple filings. There was also concern that agents conducted transactions concerning offers without the knowledge of their clients. These concerns prompted the proposal of several changes to increase involvement by the applicants themselves in the system. See 44 FR 56176 (Sept. 28, 1979). Among the proposals was a requirement that the lease offer be signed and the first year's rental be submitted by the lease applicant himself rather than an agent in order to increase the applicant's involvement and reduce the influence of agents in the process. In its final rulemaking, the Department noted that the proposal had been changed to allow an attorney-in-fact to sign an offer and submit the first year's rental if the requirements of the section were followed. 45 FR 35156, 35159 (May 23, 1980). Thus, agents were permitted to submit offers under the simultaneous system only if they filed copies of their qualifications or properly referenced them. Considering the problems the regulation was designed to address, the requirement that applicants comply cannot be considered trivial.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge